SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1890

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2022

The Senate Commerce Committee reports favorably Senate Bill No. 1890, with committee amendments.

As amended, this bill repeals current law on the regulation of home improvement and home elevation contractors and establishes the New Jersey State Board of Home Improvement and Home Elevation Contractors as the regulating body of these contractors. "Contractor" is defined to mean an individual providing home improvement or home elevation services, or both types of services, for any form of business organization or entity, including sole proprietorships, that enters into a contract with consumers. The definition excludes (1) individuals who own or manage a home improvement or home elevation business but do not perform the contracting services and (2) employees of or individuals contracted by a business entity who are hired or contracted to sell the contracting services. The bill also clarifies that "home improvement," as defined, does not include the construction of new residential property.

Additionally, the definition of "principal home improvement contractor" and "principal home elevation contractor" are established as the licensed contractors who are to oversee the performance of services of a contract. A principal contractor is needed, under the bill, if the value of the contract for services is (1) at least $120,000 and (2) requires the submittal of more than one subcode. The bill also stipulates that a principal contractor may practice as a non-principal contractor if a contract for services is agreed to in which the value of the services is less than $120,000 or the contract does not require the submittal of plans with more than one subcode.

Board membership is to consist of nine people, including five home improvement contractors, of whom two are to represent a trade association focused on the home improvement industry, one home elevation contractor, one member is to be a licensed construction code official, two members are to represent the public, and one member is to represent the Executive Branch. The members first appointed to the board are to be appointed no later than the first day of the third month following enactment of the bill.

It is the entitlement of the board to retain all funds collected as a result of fees paid for initial licensure and business registration, as well as for the renewal, reactivation, or reinstatement of licenses and registrations. The board may use funds to reimburse members for expenses incurred. The board is to assemble within 30 days of the members being appointed. Additionally, the first members of the board are to promulgate rules and regulations for specific provisions of the bill prior to it being fully operative.

The bill delineates the responsibilities of the board. Among other tasks, the board is to (1) on a biennial basis, license home improvement and home elevation contractors and register home improvement and home elevation businesses; (2) develop education requirements for contractors, including principal contractors, a voluntary examination preparatory course, and an examination, or an examination is to be designated for applicants by the board; (3) establish a code of ethics and standards of conduct for contractors; (4) develop continuing education requirements for contractors; and (5) promulgate rules and regulations as guidance for contractors.

Under the bill, an applicant can apply for licensure as a home improvement or home elevation contractor through certain apprenticeships or through experience. An attestation will need to be submitted as part of the licensure application to demonstrate that an individual has completed an apprenticeship. If applying for licensure through experience, the bill requires an individual to demonstrate, as prescribed by the board, completion of at least two years of experience performing contracting services under a home improvement or home elevation contractor, depending on the type of licensure the individual seeks to obtain. The name and address of the contracting business under who the individual gained the experience is to be included as part of the application. If an individual applies using experience, they may use experience gained out-of-State or in another U.S. jurisdiction as a home improvement or home elevation contractor or as a contractor working for another home improvement or home elevation contractor. The other state or jurisdiction is to have requirements substantially equivalent to those for contractors in New Jersey. The bill clarifies that an applicant for licensure through either an apprenticeship or through experience is to complete educational requirements as prescribed by the board. Additionally, the bill moves the requirement to prove financial stability from the requirements for individuals seeking licensure to businesses seeking registration by the board. Further requirements for registration of a business under the bill include proof of commercial general liability insurance and workers' compensation; employment of at least one licensed home elevation or licensed home improvement contractor; and compliance with all State laws regarding business, tax, and other applicable matters.

Provisions in the bill on securing and maintaining commercial general liability insurance are updated to clarify that (1) they speak to registered contracting businesses, not individuals licensed as contractors, and (2) a business is to also maintain workers' compensation insurance. This includes an update to the process to follow in the event the business has a previous liability or workers' compensation policy canceled or it is not renewed. The bill also clarifies that a registered business, not an individually licensed contractor, is to have a bond, letter of credit, or other type of security. If a business has a bond, the bill provides that it must be a compliance bond. The bill also delineates the dollar amount of the bond, letter of credit, or other type of security needed by a business depending on the value of the contract in place for a business to provide services. The board can collect penalties from a bond, letter of credit, or security if penalties are assessed against a business.

The bill allows a business to reduce, by half, the dollar amount of a compliance bond, letter of credit, or other security if the business can demonstrate that a senior manager of the business completed a course in financial responsibility and security. The board is granted discretion to require the full dollar amount of the bond, letter of credit, or other security even if a senior manager has completed an aforementioned course, if a business, as demonstrated on an application for registration for renewal, has a claim, or multiple claims, of a certain dollar amount, as determined by the board, made against the bond, letter of credit or other security held by the business.

Under the bill, if a registered business has only one licensed contractor under its employment who then leaves their employment, the registered business has 60 days to hire a new contractor. Additionally, the bill states that only a licensed contractor performing contracting services is required to wear an identification badge unless an individual is selling contracting services in-person. The bill also allows for the issuance of a temporary paper badge if there is a delay in processing of an identification badge. Moreover, if an individual wears a badge but is not a licensed contractor at the time, it is a crime of the fourth degree.

The bill retains current provisions requiring an individual performing contracting services to be licensed in New Jersey. It also stipulates that a registered contracting business, along with licensed contractors, are regulated by the provisions of the bill if the business holds itself out as providing contracting services. The bill also clarifies that contracting businesses that hold themselves out in advertisements as performing contracting services are to be registered with the State. Additionally, an advertisement is to include the registration number of the registered contracting business.

The bill also modifies the provisions of the bill from which the numerous individuals or entities are exempt to include 1) licensure

requirements; 2) the nonrenewal of a license or licensure revocation or suspension; 3) liability insurance and proof of financial stability; 4) criminal penalties; 5) identification badges; 6) licensure display; 7) the grandfathering clause; 8) the application of the law to individuals with places of business outside the State; 9) provisions on the cancellation of a contract; 10) written agreements between county or municipal offices and the board regarding consumer complaints; 11) conversion of licenses from home elevation to home improvement or home improvement to home elevation; and 12) continuing education provisions. Additionally, the bill clarifies that individuals required to be licensed for selling home repair contracts under current law are also exempt if sales are made door-to-door. However, door-to-door sales individuals are to still comply with identification badge requirements, which are required of individuals that make in-person sales to consumers.

Language in the bill also exempts from licensure individuals currently registered as a home improvement contractor in New Jersey for at least five years and individuals who have at least five years of experience in providing home elevation services who have been registered as home improvement contractors in New Jersey for at least five years or registered as home elevation contractors in New Jersey for at least five years. The bill also clarifies that an individual who is exempted under this language can qualify as a principal home improvement or home elevation contractor if they can demonstrate experience overseeing the performance of services valued at $120,000 and requiring the submission of multiple subcodes. The bill retains language that its provisions apply to all individuals engaged in New Jersey in any of the activities regulated under the bill, even if the principal place or business or the residence of the individual is outside the State.

The bill also modifies current law regarding the applicability of its provisions to municipalities by allowing a municipality to issue a construction permit to licensed contractors and registered contractors who will obtain licensure once current registrations expire and to single-family homeowners who perform certain services on their own dwelling.

The bill also stipulates the various requirements for written contracts for the performance of home improvement, home elevation, or both types of services. This includes allowing a consumer to waive the three-day waiting period during which the consumer can exercise the right to cancel a contract for a home improvement or home elevation service in the event of a bona fide emergency. Additional requirements for a contract that the bill now includes is the registration number of the business where the contractors are employed and the legal name of the principal contractor if one is needed, which is to be in a clear and conspicuous manner.

The bill also allows a county or municipal office of consumer affairs that enters into a written agreement with the board to accept consumer complaints against either a contractor or registered business to be entitled to a share of licensing and registration fees collected by the board.

The bill also establishes a process for converting a license for home improvement to home elevation, which may entail a fee. The bill stipulates that, among other items, the individual works at least two years on home elevations under a home elevation contractor licensed pursuant to the bill and that the required cargo insurance requirement of the registered business is maintained.

The bill also incorporates the board under various provisions of Title 45, including those related to the appointment of public members to a board. Additionally, the bill establishes continuing education requirements for licensed contractors. At least six hours of continuing education is to be completed each biennial renewal period by a licensee. The bill also delineates the board's role in approving providers and conferring credit for courses, and stipulates that online courses are permissible. Lastly, the effective date of the bill ties it being fully operative to the promulgation of rules and regulations issued by the first members of the board.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) clarify that the definition of "contractor" applies to individuals providing home improvement or home elevation services and excludes owners or managers of home improvement or home elevation businesses who do not perform the services and individuals who strictly sell the services;

(2) exclude new residential properties from the definition of "home improvement;"

(3) delete the definition of "responsible managing employee," and subsequent references, and add definitions of "principal home improvement contractor" and "principal home elevation contractor;"

(4) adjust board membership by deleting as a member a home elevation contractor, adding two members representing a trade association focused on the home improvement industry, and stipulating that the members first appointed will be appointed by the first day of the third month following enactment of the bill and are to promulgate rules and regulations for specific provisions of the bill prior to it being fully operative;

(5) specify that the board is entitled to retain the fees it collects and may reimburse members of the board with the fees;

(6) add certain responsibilities regarding education and examination requirements for the board to fulfill;

(7) clarify that if applying for licensure through experience, an attestation is not necessary; that the application is to require the name

and address of the contracting business for whom the applicant worked; and that certain experience gained out-of-State may apply towards the experience requirement in New Jersey;

(8) reiterate that educational requirements as established by the board are to be completed by contracting licensure applicants;

(9) establish requirements for contracting businesses to be proof of financial stability, commercial general liability insurance and workers' compensation; employment of one licensed home improvement or licensed home elevation contractor; and compliance with all applicable State laws on business, tax, and other matters;

(10) update provisions on securing and maintaining commercial general liability insurance to include securing and maintaining workers' compensation insurance; apply these requirements to registered contracting businesses rather than licensed contractors; and include a process for when an original policy is canceled or not renewed;

(11) require a registered business, not an individual contractor, to obtain a bond, letter of credit, or other type of security and that if a bond is secured, it is to be a compliance bond;

(12) delineate the dollar amount of the bond, letter of credit, or other type of security needed by a business and allow the board to collect penalties from a bond, letter of credit, or security if penalties are assessed against a business;

(13) remove language connecting the board to the process by which a consumer makes a claim against the bond, letter of credit, or other security of a business;

(14) allow a person in senior management to complete a course in financial responsibility and stability to qualify for a reduced amount of the compliance bond, letter of credit or other security but allow the board the ability to require maintenance of the full amount if it is demonstrated on the application for business registration renewal that a business received a claim, or multiple claims, in a dollar amount as determined by the board, made against its compliance bond, letter of credit, or other security;

(15) require a registered business with one licensed contractor under its employment who then leaves the employment 60 days to hire a new contractor;

(16) remove the requirement for an identification badge for individuals strictly selling home improvement or home elevation services unless selling of services is provided in-person;

(17) allow temporary paper badges to be issued if there is a delay in processing of an identification badge;

(18) stipulate that a registered contracting business is regulated by the provisions of the bill if it holds itself out as providing contracting services;

(19) require registration numbers of a business to be included in all advertisements;

(20) modify the provisions of the bill from which the numerous individuals or entities are exempt; and clarify that individuals required to be licensed for selling home repair contracts under current law are also exempt if sales are made door-to-door but they are still to comply with identification badge requirements;

(21) reduce the number of years that qualifies a New Jersey-registered contractor to be exempt from the bill and allow a registrant to qualify as a principal home improvement or home elevation contractor if they have experience overseeing the performance of services valued at a minimum of $120,000 and requiring the submission of multiple subcodes;

(22) allow a municipality to issue a construction permit to registered contractors who will obtain licensure once current registrations expire and to single-family homeowners who perform certain services on their own dwelling;

(23) remove the requirement for direct supervision for experience required to convert a home improvement to a home elevation contractor and remove a reference to "place of employment" and insert "registered business" as the entity to maintain the required cargo insurance for individuals converting to a home elevation license;

(24) incorporate the board under various provisions of Title 45, including those related to the appointment of public members to a board;

(25) establish continuing education requirements, including the role of the board and the responsibilities of course providers;

(26) lengthen the effective date;

(27) replace certain terms with or incorporate the term "registered business;"

(28) tie the bill being fully operative to the promulgation of rules and regulations issued by the first members of the board; and

(29) make clarifications for consistency and grammar in the bill.